

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN DOE 1, JOHN DOE 2, JANE DOE 1, JANE DOE 2, JANE DOE 3, and all persons similarly situated,

Plaintiffs,

V.

WASHINGTON STATE DEPARTMENT
OF CORRECTIONS, and STEPHEN
SINCLAIR, Secretary of the Department
of Corrections, in his official capacity,

Defendants.

and

BONNEVILLE INTERNATIONAL INC.,
a Utah Corporation d.b.a. KIRO RADIO
97.3 FM; THE MCCLATCHY
COMPANY, LLC, a California Limited
Liability Company d.b.a. THE TACOMA
NEWS TRIBUNE; and ANDREA
KELLY, an individual.

Interested Parties.

NO. 4:21-CV-5059-TOR
ORDER GRANTING
PRELIMINARY INJUNCTION

1 BEFORE THE COURT is Plaintiffs' Motion for Preliminary Injunction
2 (ECF No. 7). This matter was submitted for consideration with telephonic oral
3 argument on May 12, 2021. Katherine M. Forster, Ethan D. Frenchman, Heather
4 L. McKimmie, Lisa Nowlin, Nancy L. Talner, Danny Waxwing, and Joseph R.
5 Shaeffer appeared on behalf of Plaintiffs. Candie M. Dibble appeared on behalf of
6 Defendants. Michele L. Earl-Hubbard appeared on behalf of Interested Party The
7 McClatchy Company, d.b.a. The Tacoma News Tribune. Candice Jackson
8 appeared on behalf of Interested Party Andrea Kelly. The Court has reviewed the
9 record and files herein, considered all the parties' oral arguments, and is fully
10 informed. For the reasons discussed below, Plaintiffs' Motion for Preliminary
11 Injunction (ECF No. 7) is **GRANTED**.

12 The Court has subject matter jurisdiction over Plaintiffs' federal
13 constitutional and statutory claims pursuant to 42 U.S.C. § 1983, as well as 28
14 U.S.C. §§ 1331 and 1343. The Court has supplemental jurisdiction pursuant to 28
15 U.S.C. § 1367 over Plaintiffs' state law constitutional and statutory claims, which
16 arise out of the same basis of operative facts as Plaintiff's federal claims.

17 BACKGROUND

18 This case concerns three records requests that Defendants received pursuant
19 to Washington's Public Records Act ("PRA") seeking information related to
20

1 incarcerated transgender¹ individuals. The requests were received following an
2 interview with Pierce County Sheriff Ed Troyer on March 10, 2021, conducted by
3 Dori Monson on KIRO 97.3 FM, to follow up on an anonymous email purportedly
4 sent by a DOC employee alleging men were “claiming to be women” in order to
5 transfer to women’s prisons. ECF No. 1 at 10, ¶ 4.5.

6 On March 12, 2021, Stacia Glenn of the Tacoma News Tribune requested
7 the following records and information:

- 8 • “The number of transgender or gender non-conformists inmates who
9 have been transferred to the Washington State Corrections Center for
Women in Purdy in recent months.
- 10 • The dates the transgender or gender non-conformists inmates were
11 moved to Purdy, and the facilities from which they were moved.
- 12 • The names and ages of the transgender or gender non-conformists
13 inmates moved to Purdy and the convictions they are serving time for.
- 14 • The number of and any records or documents related to complaints or
disciplinary action taken against the transgender or gender
nonconformists inmates moved to Purdy.”

15 ECF No. 1 at 11, ¶ 4.6.

16 On March 16, 2021, an individual named “Aaron” from KIRO 97.3 FM
17

18 ¹ For purposes of this Order, the Court uses the term “transgender” as an
19 umbrella term to include transgender, non-binary, gender non-conforming, and
20 intersex individuals.

1 requested the following records and information from Defendants:

- 2 • “The number of transgender inmates currently housed in DOC prison
3 facilities.
- 4 • The number of transgender inmates who are currently waiting to be
5 transferred to a prison matching their sexual identity.
- 6 • The number of inmates evaluated and confirmed by DOC to be
7 transgendered.
- 8 • The number of transfer requests made by transgender individuals that
9 have been approved and denied.
- 10 • Records explaining the reasoning for any denial of a transgendered
11 incarcerated request for transfer.
- 12 • The number of transgendered incarcerated individuals who have
13 requested gender reassignment surgery.
- 14 • The number of transgendered incarcerated individuals who have
15 requested and received gender reassignment surgery.
- 16 • The number of transgendered incarcerated individuals who are
17 currently scheduled for gender reassignment surgery.
- 18 • The names of all transgendered incarcerated individuals who have
19 requested, received or are scheduled for gender reassignment surgery.
- 20 • Any infractions, complaints, reports, concerns submitted by other staff
21 or other incarcerated individuals regarding the following individuals:
22 [Names omitted]
- 23 • Have four transgender inmates at the Washington Corrections Center
24 for Women who have male names requested state assistance in
25 obtaining gender re-assignment surgery?”

20 *Id.* at 11-12, ¶ 4.7.

1 On March 19, 2021, an individual named Andrea Kelly requested the
2 following records and information from Defendants:

- 3 • “The number of transgender individuals currently incarcerated broken
4 out by facility location.
- 5 • Number of incarcerated individuals who have been transferred from a
6 men's facility to a women's facility since January 1, 2021.
- 7 • The number of male incarcerated individuals who identify as female,
8 nonbinary or any other gender identity who are currently housed at a
9 Women's prison facility.
- 10 • The number of incarcerated individuals who have transferred from a
11 Women's facility to a Men's facility since January 1, 2021.
- 12 • The number of female incarcerated individuals who identify as male,
13 nonbinary or any other gender identity who are currently housed in a
14 Men's prison facility.”

15 *Id.* at 12-13, ¶ 4.8.

16 On March 15, 2021 and March 23, 2021, Disability Rights Washington
17 (“DRW”), one of Plaintiffs’ counsel in this matter, was notified of the three records
18 requests by the Corrections Division of the Washington Office of the Attorney
19 General (“Attorney General”). *Id.* at 16, ¶ 4.19. The communication between the
20 parties was prompted by the structured negotiations agreement between DRW and
Defendant Department of Corrections (“DOC”), which began in December 2019 as
an alternative to litigation regarding DRW’s concerns over the treatment of
transgender, intersex, and gender non-binary individuals with disabilities. *Id.* at ¶

1 4.18. DRW remains in close contact with DOC and its counsel at the Attorney
2 General's Office regarding the treatment of such individuals. *Id.*

3 In response to PRA records requests generally, Defendants do not compile
4 or create new records to disseminate aggregate numerical information, such as the
5 information requested here. ECF Nos. 1 at 17, ¶ 4.20; 32 at 5, ¶ 5. Rather,
6 Defendants identify and release certain records from which requestors can derive
7 the information they seek. *Id.* With respect to the requests at issue, Defendants
8 did not provide DRW with a list of records they identified as responsive prior to
9 the initiation of this litigation. ECF No. 1 at 17, ¶ 4.20. However, DRW believed,
10 based on its knowledge of DOC records, that the identified documents may include
11 highly sensitive and confidential information regarding transgender inmates and
12 former inmates. *Id.* Defendants' counsel indicated DOC did not intend to invoke
13 any of the exceptions under the PRA to prevent disclosure of the records, but they
14 would redact information from the documents as statutorily required. ECF Nos. 7
15 at 16-17, ¶ 4.19; 32 at 14, ¶ 22.

16 Plaintiffs allege disclosure of the requested information threatens their
17 health, safety, and privacy because the records contain highly confidential
18 information that directly or indirectly pertains to Plaintiffs' status as transgender.
19 ECF No. 7 at 4-5; *see also* ECF No. 1 at 13-15, ¶¶ 4.9-4.15 (discussing increased
20 likelihood of sexual victimization for transgender inmates). For example, DOC

1 screens inmates to collect information regarding their sexual assault history, gender
2 identity, and medical information. ECF No. 1 at 8-9, ¶ 4.2. Inmates may also
3 request accommodations for gender-affirming property and medical care by filling
4 out a DOC Preferences Request form, which indicates their search preferences,
5 confidentiality preferences, and housing safety concerns. ECF Nos. 7 at 6-7; 32 at
6 3-4, ¶ 2. Such information is collected to comply with the Prison Rape Elimination
7 Act (“PREA”), 34 U.S.C. § 30301 *et seq.* *Id.*; ECF No. 1 at 9, ¶ 4.2. The
8 Preferences Request forms are kept on a secure database that is accessible to a
9 limited number of staff. ECF No. 32 at 4, ¶ 2. Similarly, DOC periodically
10 reviews housing preferences for transgender individuals to ensure they are
11 appropriately placed in facilities consistent with their preferences. *Id.* at ¶ 3. The
12 housing assessments are also stored on a secure database accessible by a limited
13 number of staff. *Id.*

14 The Deputy Director of Prisons maintains a spreadsheet to help manage
15 DOC records for transgender individuals in order to comply with the federal
16 mandates of PREA. ECF No. 32 at 4-5, ¶ 4. The spreadsheet contains information
17 such as an inmate’s name, DOC identification number, current facility location,
18 preferred pronouns, search preferences, dates of housing reviews, and a computer
19 pathway link to their most recent housing review. *Id.* The spreadsheet is stored on
20 a secure database accessible by a limited number of staff. *Id.* Plaintiffs fear the

1 release of such information could be pieced together to reveal their identity,
2 transgender status, and location. ECF No. 7 at 8.

3 DOC policies require the above information to be kept confidential and
4 disclosed only on a need-to-know basis. ECF No. 7 at 7. For example, DOC
5 Policy 490.700, Transgender, Intersex, and/or Gender Non-Conforming Housing
6 and Supervision, states that “[a]n individual’s sexual orientation, gender
7 expression/transition status, intersex status, or gender identity will be maintained
8 as confidential and will only be disclosed on a need to know basis.” *Id.* Similarly,
9 DOC Policy 490.820, PREA Risk Assessments and Assignments, states “[a]n
10 offender’s transgender/intersex status will be maintained as confidential and only
11 disclosed on a need to know basis.” *Id.*

12 Defendants have now included a list of documents they identified as
13 responsive to at least some of the records requests. ECF No. 32 at 13, ¶ 21; at 16-
14 18. The documents include the internal tracking spreadsheet; Housing
15 Review/MDT forms; infraction records; PREA investigation records; and Legal
16 Face Sheets. ECF No. 32 at 16-18. Defendants argue there is no authority that
17 exempts from disclosure an individual’s transgender status. ECF No. 32 at 14, ¶
18 22; at 15, ¶ 26.

19 Plaintiffs seek a preliminary injunction enjoining Defendants from releasing
20 “any records (including names and numbers) that identify transgender, non-binary,

1 gender non-conforming, and/or intersex current or former prisoners, as well as
2 their sexual history, sexual orientation, sexual victimization, genital anatomy,
3 and/or mental health and medical information, including any records concerning
4 their transfer requests, discipline, PREA investigations and allegations, or gender-
5 affirming surgery.” ECF No. 51.

6 DISCUSSION

7 I. Preliminary Injunctive Relief—Constitutional Claims

8 Pursuant to Federal Rule of Civil Procedure 65, the Court may grant
9 preliminary injunctive relief to prevent “immediate and irreparable injury.” Fed.
10 R. Civ. P. 65(b)(1)(A). To obtain this relief, a plaintiff must demonstrate: (1) a
11 likelihood of success on the merits; (2) a likelihood of irreparable injury in the
12 absence of preliminary relief; (3) that a balancing of the hardships weighs in
13 plaintiff’s favor; and (4) that a preliminary injunction will advance the public
14 interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *M.R. v.*
15 *Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012). Under the *Winter* test, a plaintiff must
16 satisfy each element for injunctive relief.

17 Alternatively, the Ninth Circuit also permits a “sliding scale” approach
18 under which an injunction may be issued if there are “serious questions going to
19 the merits” and “the balance of hardships tips sharply in the plaintiff’s favor,”
20 assuming the plaintiff also satisfies the two other *Winter* factors. *All. for the Wild*

1 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (“[A] stronger showing of
2 one element may offset a weaker showing of another.”); *see also Farris v.*
3 *Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) (“We have also articulated an
4 alternate formulation of the *Winter* test, under which serious questions going to the
5 merits and a balance of hardships that tips sharply towards the plaintiff can support
6 issuance of a preliminary injunction, so long as the plaintiff also shows that there is
7 a likelihood of irreparable injury and that the injunction is in the public interest.”
8 (internal quotations and citation omitted)).

9 **A. Likelihood of Success on the Merits**

10 To obtain injunctive relief, Plaintiffs must show that there are “serious
11 questions going to the merits” of their claims, and that they are likely to succeed on
12 those questions of merit. *Cottrell*, 632 F.3d at 1131; *Farris*, 677 F.3d at 865.

13 Defendants contend Plaintiffs are unlikely to succeed on the merits because
14 Plaintiffs cannot demonstrate Defendants’ statutory obligation to release the
15 records amounts to a constitutional violation. ECF No. 32 at 19.

16 Interested party, the McClatchy Company, contends that the Court should
17 not impose a preliminary injunction without personally reviewing each individual
18 document intended to be disclosed. It contends the information sought will not
19 meet the preliminary injunction standard. However, Defendant affirmatively
20 represents that information related to an inmate’s sexual orientation, sexual history,

or history of alleged sexual victimization contained outside of a medical record, will be disclosed. ECF No. 32 at 15. Additionally, if an inmate discloses this information in order to file a grievance or some other record, the information will be disclosed. *Id.* Thus, when an inmate seeks to obtain the protections of PREA and discloses confidential information, the DOC maintains this information as confidential, until a PRA request seeks public disclosure. *Id.* at 15-16.

i. *Eighth Amendment*

Plaintiffs assert the disclosure of the requested documents is tantamount to cruel and unusual punishment in violation of the Eighth Amendment. ECF No. 7 at 14. Defendants respond that Plaintiffs' Eighth Amendment claim will fail because Plaintiffs cannot demonstrate a substantial risk of harm or that Defendants acted with deliberate indifference to Plaintiffs' health and safety. ECF No. 32 at 21-26.

It is well settled that “the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment.” *Farmer v. Brennan*, 511 U.S. 825, 832, (1994) (citation omitted). In addition to ensuring inmates receive adequate food, shelter, and medical attention, prison officials must also take reasonable steps to ensure the safety of incarcerated individuals. *Id.* (citation omitted). Specifically, prison officials have a duty to protect incarcerated individuals from violent acts carried out by other

1 prisoners. *Id.* at 833. “[G]ratuitously allowing the beating or rape of one prisoner
2 by another serves no legitimate penological objective.” *Id.* (internal quotations,
3 brackets, and citation omitted). While not every violent act carried out against a
4 fellow inmate constitutes an Eighth Amendment violation, “deliberate indifference
5 to a substantial risk of serious harm” does rise to the level of a constitutional
6 violation. *Id.* at 828 (internal quotations and citations omitted).

7 To succeed on a claim under the Eighth Amendment alleging a failure to
8 prevent future harm, such as the claim here, a prisoner must meet two elements.
9 *Farmer*, 511 U.S. at 834. First, the prisoner must establish he or she is being
10 incarcerated under conditions that pose a substantial risk of serious harm. *Id.*
11 Second, a prisoner must show the prison official acted with deliberate indifference
12 to the prisoner’s health or safety. *Id.* As to the first element, “a prisoner can
13 establish exposure to a sufficiently serious risk of harm by showing that he [or she]
14 belongs to an identifiable group of prisoners who are frequently singled out for
15 violent attack by other inmates.” *Id.* at 843 (quotations and citation omitted).
16 Courts have routinely found that transgender prisoners are at increased
17 vulnerability to abuse in the prison systems. *See, e.g., Zollicoffer v. Livingston*,
18 169 F. Supp. 3d 687, 696 (S.D. Tex. 2016) (stating “[t]he vulnerability of
19 transgender prisoners to sexual abuse is no secret” and citing a report conducted in
20 2011 by the Bureau of Justice Statistics that found “34.6% of transgender inmates

1 reported being the victim of sexual assault,” which was “nearly nine times the rate
2 for all prisoners”); *Doe v. D.C.*, 215 F. Supp. 3d 62, 75 (D.C. Cir. 2016); *Tay v.*
3 *Dennison*, 457 F. Supp. 3d 657, 684 (S.D. Ill. 2020).

4 Regarding the second element, deliberate indifference occurs when a prison
5 official is both aware of facts from which an inference could be drawn that a
6 substantial risk of serious harm exists, and the prison official must also draw that
7 inference. *Farmer*, 511 U.S. at 837. Whether the official had knowledge is a
8 question of fact provable “in the usual ways, including inference from
9 circumstantial evidence.” *Id.* at 842. “The very fact that the risk was obvious”
10 may be sufficient to prove knowledge. *Id.*

11 Here, Plaintiffs are transgender individuals and are, therefore, at an
12 increased risk of abuse while incarcerated. Thus, Plaintiffs are likely to succeed as
13 to the first element of their Eighth Amendment claim. As to the second element,
14 Defendants argue Plaintiffs’ Eighth Amendment claim will fail because any
15 increased risk to Plaintiffs’ safety resulting from the disclosure of the records is
16 merely speculative. ECF No. 32 at 22. Specifically, they argue Plaintiffs have not
17 pointed to “any tangible evidence” that the identified documents “actually contain”
18 the information Plaintiffs are concerned will be released or that the release of the
19 records will result in an excessive risk to Plaintiffs’ safety. ECF No. 32 at 22-23.

20 Defendants’ arguments run contrary to the law and to well-documented

1 evidence regarding violence against transgender inmates. Defendants focus on the
2 details contained in each individual document, and whether, and to what extent,
3 each Plaintiffs' transgender status is known within their respective facilities. ECF
4 No. 32 at 23. Defendants fail to account for the effect of the disclosures when
5 taken as a whole. While each individual document or file for each individual
6 Plaintiff may only contain snippets of information, the aggregate data could easily
7 be pieced together, revealing an individual's transgender status, location, medical
8 history, and other highly confidential information. Even where certain individuals
9 openly disclose their transgender status within the prison system, the disclosures
10 threaten other individuals who have not made such disclosures. In any event, an
11 individual's choice to live openly does not necessarily reduce the threats to their
12 safety as a transgender person. *See* ECF No. 1 at 13-15, ¶¶ 4.9-4.15.

13 Prison officials will not escape liability for deliberate indifference,
14 regardless of whether the risk of harm is to one prisoner in particular or to all
15 similarly situated prisoners. *See Farmer*, 511 U.S. at 843. The Court finds the risk
16 to Plaintiffs is obvious, such that Plaintiffs are likely to succeed on the second
17 element of deliberate indifference.

18 Because Plaintiffs are members of a group of prisoners who are frequently
19 targeted for attack by other prisoners, and this fact is well-understood and obvious
20 within prison systems, Plaintiffs are likely to succeed on the merits of their Eighth

Amendment claim.

ii. Fourteenth Amendment

Plaintiffs contend they will succeed on their Fourteenth Amendment claim because their status as transgender is constitutionally protected. ECF No. 7 at 19. Defendants argue there is no fundamental right to privacy in one's "gender identity." ECF No. 32 at 27.

A state action that infringes upon a fundamental right will be upheld so long as the action furthers a compelling state interest and is narrowly tailored to serve that interest. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 780 (9th Cir. 2014) (citation omitted). In the context of prisons, an action or regulation that infringes an inmate's constitutional rights is valid only if it is reasonably related to a legitimate penological interest. *Powell v. Schriver*, 175 F.3d 107, 112 (2d Cir. 1999) (citing *Turner v. Saffley*, 482 U.S. 78, 89 (1987)). While it is well-settled that a right to privacy is a fundamental right, the specific contours of that right, particularly as it applies to transgender status, are not well delineated. The Ninth Circuit has not addressed the right to privacy in the context of a prisoner's transgender status. However, the Court finds similar cases outside the Ninth Circuit instructive.

In *Powell v. Schriver*, the plaintiff was a prisoner who had undergone gender-affirming surgery prior to her incarceration. *Powell*, 175 F.3d at 109.

1 During an escort within the prison, one correction officer revealed to another
2 correction officer, in the presence of other inmates, that the plaintiff was
3 transgender and HIV positive. *Id.* The Second Circuit extended its holding in *Doe*
4 *v. City of New York*, 15 F.3d 264 (2d. Cir. 1994), finding the right to privacy,
5 including the right to protect information about one's health, applied to transgender
6 prisoners. *Powell*, 175 F.3d at 112 (“individuals who are [transgender] are among
7 those who possess a constitutional right to maintain medical confidentiality”).
8 Additionally, the court did not find the disclosure narrowly tailored to serve a
9 legitimate penological interest, “especially given that, in the sexually charged
10 atmosphere of most prison settings, such disclosure might lead to inmate-on-
11 inmate violence.” *Id.* at 113.

12 Outside the context of the prison system, in *Kallstrom v. City of Columbus*,
13 136 F.3d 1055 (6th Cir. 1998), the city released undercover officer personnel
14 information to the defense counsel on a drug conspiracy case involving a violent
15 gang. *Id.* at 1059. The information contained the officers' addresses and phone
16 numbers, banking information, responses to questions about their personal lives
17 asked during polygraph tests, and the names, addresses, and phone numbers of
18 immediate family members. *Id.* The court found the release of the information
19 posed a significant threat to the officers and their families. *Id.* at 1062. Thus, the
20 court held that where the release of personal information places an individual at

1 substantial risk of bodily harm, or a perceived risk of harm, a constitutionally
2 protected privacy interest will be implicated. *Id.* at 1064. Further, the court found
3 the release was not narrowly tailored to serve a compelling government interest
4 because the information that was disclosed was not related to government
5 accountability or helping the public understand the internal workings of the police
6 agency. *Id.* at 1065.

7 Finally, another case outside the prison context, *Love v. Johnson*, 146 F.
8 Supp. 3d 848 (E.D. Mich. 2015), synthesized the reasonings in *Powell* and
9 *Kallstrom* and applied it to disclosure of an individual’s transgender status. There,
10 the plaintiffs were transgender individuals challenging Michigan’s policy for
11 changing a person’s sex on their driver license. *Id.* at 851. The plaintiffs alleged
12 the policy indirectly required them to disclose their transgender status to complete
13 strangers, in violation of their constitutionally protected right to privacy. *Id.* at
14 852. The court agreed, finding the right to privacy that protected a transgender
15 person’s medical information (the reasoning in *Powell*) and the right to privacy
16 that protected an individual’s personal information (the reasoning in *Kallstrom*)
17 also encompassed the right to protect an individual’s transgender status. *Id.* at 856.
18 The court reasoned that both *Powell* and *Kallstrom* emphasized “the risk of
19 physical harm stemming from the disclosure of certain personal information.” *Id.*
20 at 855. Additionally, the “plethora of evidence” presented by the plaintiffs

1 demonstrated that disclosure of a person's transgender status posed a very real
2 threat to a person's security and bodily integrity. *Id.* at 855. Consequently, the
3 court held requiring individuals to disclose their transgender status implicated a
4 fundamental right to privacy. *Id.* at 856. The court did not reach whether the
5 disclosure was narrowly tailored as the motion was decided at the dismissal stage.
6 *Id.* at 857.

7 Defendants assert those cases are inapplicable because they do not stand for
8 the proposition that transgender status is a protected category and no other
9 authority within the Ninth Circuit has identified transgender status as a protected
10 status. ECF No. 32 at 27-28. While Defendants are correct to the extent that the
11 Ninth Circuit has not directly addressed the issue, it is not beyond the realm of
12 possibility that the Ninth Circuit would find transgender status a protected class
13 given its treatment of transgender issues in other areas of the law. *See, e.g.*,
14 *Karnoski v. Trump*, 926 F.3d 1180 (9th Cir. 2019) (holding review of military
15 policy regarding transgender status that allegedly violated equal protection and
16 substantive due process rights under the Fifth Amendment required "something
17 more than rational basis but less than strict scrutiny"); *Parents for Priv. v. Barr*,
18 949 F.3d 1210 (9th Cir.) (holding a school district's "carefully-crafted Student
19 Safety Plan seeks to avoid discrimination and ensure the safety and well-being of
20 transgender students" and that a policy allowing transgender students to use

1 bathrooms and locker rooms in the same manner as cisgender students did not
2 infringe cisgender students' Fourteenth Amendment privacy rights); *Edmo v.*
3 *Corizon, Inc.*, 935 F.3d 757 (9th Cir. 2019) (finding a prison official's denial of
4 gender-affirming surgery to treat gender dysphoria was a violation of the Eighth
5 Amendment in light of the increased awareness regarding transgender health).

6 Additionally, it is difficult to imagine any circumstances under which the
7 disclosure of a prisoner's transgender status to the general public serves a
8 penological purpose. *Powell*, 175 F.3d at 113 (citation omitted). While
9 Defendants have an interest in complying with their statutory duty to release
10 records upon request, the proposed disclosures do not appear narrowly tailored to
11 serve a legitimate penological purpose. The requests seek aggregate data relating
12 to transgender inmates, but the documents identified for release may contain
13 information beyond what is requested, which could be pieced together to reveal the
14 specific identities and locations of those inmates.

15 For these reasons, the Court finds Plaintiffs are likely to succeed on the
16 merits of their Fourteenth Amendment claim.

17 *iii. Washington State Constitution, Article I, Section 7*

18 Plaintiffs argue the proposed disclosures are not "carefully tailored" or
19 limited to what is "reasonably necessary" to promote Defendants' valid
20 governmental interest. ECF No. 7 at 24. Defendants respond Plaintiffs'

1 Washington State Constitutional claims will fail because Plaintiffs fail to show
2 how releasing the records would be “highly offensive,” and because some
3 Plaintiffs have already disclosed their transgender statuses. ECF No. 32 at 30.

4 Washington State Constitution Article I, Section 7 states, “[n]o person shall
5 be disturbed in his private affairs, or his home invaded, without authority of law.”

6 *Washington Pub. Emps. Ass'n v. Washington State Ctr. for Childhood Deafness &*
7 *Hearing Loss*, 194 Wash. 2d 484, 504 (2019). Washington courts recognize two
8 interests protected by the right to privacy: “the right to autonomous decision-
9 making and the right to nondisclosure of intimate personal information, or

10 confidentiality.” *Id.* (citations omitted). Cases alleging Article I, Section 7
11 violations with regard to personal information generally involve the disclosure of
12 information such as a person’s name, address, telephone number, birthdate,

13 employment history, and criminal convictions. *See, e.g., Ino Ino, Inc. v. City of*
14 *Bellevue*, 132 Wash. 2d 103 (1997); *O'Hartigan v. Dep't of Pers.*, 118 Wash. 2d

15 111 (1991); *Peninsula Counseling Ctr. v. Rahm*, 105 Wash. 2d 929 (1986). Under
16 those circumstances, the right to confidentiality has not been recognized as a
17 fundamental right subject to strict scrutiny. *Washington Pub. Emps. Ass'n*, 194

18 Wash. 2d at 504. Rather, courts apply a rational basis analysis to determine
19 whether disclosure of personal information serves a legitimate government interest,
20 is carefully tailored to serve that interest, and is no greater than necessary. *Id* at

1 505.

2 The Washington Supreme Court has not addressed the release of more
3 intimate information, such as the information at issue here. Thus, it is unclear
4 whether rational basis would still apply or whether a heightened scrutiny would be
5 more appropriate. In *Washington Pub. Emps. Ass'n*, the Court declined to adopt a
6 stricter standard when it analyzed the disclosure of personal identification
7 information such as birth date information. *Id.* at 507. The Court reasoned
8 information like a person's birthdate "is widely available in the public domain and
9 does not involve the same level of intimacy as, for example, mental health records
10 or sexual history, which have been deemed private affairs." *Id.* The Court did not
11 indicate what level of scrutiny would be appropriate for more intimate information
12 but seemed to imply the standard should be something more than rational basis.
13 Therefore, it is not beyond the realm of possibility that the Washington Supreme
14 Court may deem intimate personal information that is not widely available in the
15 public domain, such as a person's transgender status, as a protected privacy interest
16 that would be more appropriately analyzed under a heightened scrutiny.

17 Regardless of the standard that is applied, the Court finds Plaintiffs have
18 alleged sufficient factual allegations to succeed on the merits of their Article I,
19 Section 7 claim. While Defendants have a legitimate interest in fulfilling their
20 statutory duty and an interest in promoting government transparency, the proposed

1 release is not carefully tailored nor is it limited to what is no greater than
2 necessary.

3 Defendants do not track aggregate numerical data on the information sought.
4 ECF No. 32 at 5, ¶ 5. Instead, Defendants plan to release documents such as the
5 DOC Preferences Request forms, the internal spreadsheet used to track those
6 forms, inmate legal face sheets, housing protocol forms specific to transgender
7 inmates, and other similar documents, which Defendants will redact as they deem
8 necessary for statutory compliance. ECF No. 32 at 16-18. Defendants state they
9 will redact social security numbers and information related to medical information
10 contained in a medical file, but they will not withhold information related to an
11 individual's gender identity or sexual history, as they are not under a statutory duty
12 to withhold such information. ECF No. 32 at 14-16, ¶¶ 22-27. While each
13 individually redacted document may not reveal identifying information, the
14 disclosure taken as a whole could be pieced together to reveal an individual's
15 identity, transgender status, and facility location.

16 Moreover, while Defendants claim some Plaintiffs (named or in the
17 proposed class) have already disclosed their transgender status or checked a box on
18 a form that indicates whether the individual wants to keep this information
19 confidential from other individuals, see ECF No. 33-2 at 2, there is no showing that
20 the individuals knowingly and voluntarily understood that their information would

1 be shared with the public through a public disclosure request or that it would be
2 distributed beyond the personnel necessary to act upon their housing and safety
3 requests.

4 Given the serious and probable safety concerns posed by Defendants' disclosure, the Court does not find the release of the proposed documents carefully tailored nor is the disclosure no greater than necessary. Defendants' legitimate interest in promoting governmental transparency and complying with its statutory duty under the PRA cannot overcome Plaintiffs' safety concerns. Consequently, Plaintiffs are likely to succeed on the merits of their Washington state constitutional claim.

5 Based on the foregoing, the Court finds Plaintiffs have shown there are
6 serious questions going to the merits of their claims and that they are likely to
7 succeed on the merits of their state and federal constitutional claims.

8

9 **B. Likelihood of Irreparable Injury**

10 Plaintiffs assert they will suffer irreparable harm if the records are released
11 because they will face an increased risk of harassment, violence, and sexual assault
12 by other inmates and correctional staff. ECF No. 7 at 24. Plaintiffs also argue the
13 harm will not end upon release; they will face ongoing discrimination and other
14 barriers in many facets of daily life. ECF No. 7 at 25. Defendants argue Plaintiffs
15 will not suffer irreparable harm because some inmates have not requested their

1 information be kept confidential and because there is no evidence that Defendants
2 fail to adequately protect Plaintiffs. ECF No. 32 at 31.

3 “Irreparable harm is traditionally defined as harm for which there is no
4 adequate legal remedy, such as an award of damages.” *Arizona Dream Act Coal.*
5 *v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). “[I]ntangible injuries, such as
6 damage to recruitment efforts and goodwill, qualify as irreparable harm.” *Rent-A-*
7 *Car, Inc. v. Canyon Television and Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th
8 Cir. 1991). Caselaw and social science paint a clear picture of the very likely harm
9 Plaintiffs will face if the requested information is disclosed. *See, e.g., Powell v.*
10 *Schrivener*, 175 F.3d 107 (2d Cir. 1999) (remanding transgender prisoner’s claim for
11 Eighth Amendment violations after finding “it was obvious” that the prisoner’s
12 transgender status placed her in harm’s way); *Edmo v. Corizon, Inc.*, 935 F.3d 757
13 (9th Cir. 2019) (applying the “dictates of the Eighth Amendment” to transgender
14 health care, finding the denial of gender affirming surgery violated the Eighth
15 Amendment); *Tay v. Dennison*, 457 F. Supp. 3d 657 (S.D. Ill. 2020) (finding the
16 irreparable harm a transgender prisoner was likely to face was “far from a mere
17 possibility” given her history of sexual assault, harassment, and abuse while
18 incarcerated); *see id.* at 687 (collecting cases); ECF Nos. 9 at 12-13; 10 at 7.
19 Consequently, Court finds Plaintiffs will suffer irreparable injury absent a
20 preliminary injunction.

C. Public Interest

Plaintiffs assert there is no public interest that would be injured by the issuance of a preliminary injunction. ECF No. 7 at 27. Plaintiffs also emphasize that public interest would actually be served by preventing the disclosure because it furthers the goal of prison safety. *Id.* Defendants argue holding an agency liable for constitutional violations following its good-faith response under the PRA is not in the public's interest. ECF No. 32 at 31.

In determining whether to issue a preliminary injunction, courts must balance the competing interests. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011). Here, the competing interests are Plaintiffs' desire to keep confidential certain private information in order to protect their safety, and also the need for safety in the prison systems more broadly, and Defendants' interest in statutory compliance and the need for governmental transparency. Notably, Defendants do not argue there is a public interest in the information contained in the disclosures at issue; instead, they argue, without explanation, withholding the information would not be in the best interest of the public. ECF No. 32 at 31.

Congress contemplated public safety when it enacted the Prison Rape Elimination Act (“PREA”) by explicitly finding “[p]rison rape endangers the public safety by making brutalized inmates more likely to commit crimes when

1 they are released.” 34 U.S.C. § 30301(8). Congress additionally found “the failure
2 of State officials to adopt policies and procedures that reduce the incidence of
3 prison rape” compromised the effectiveness and efficiency of government-funded
4 prison programs. 34 U.S.C. § 30301(14). Further, and of notable consequence to
5 this case, Congress incorporated *Farmer v. Brennan* into the PREA, referencing
6 the “high incidence of sexual assault within prisons [that] involves actual and
7 potential violations of the United States Constitution.” 34 U.S.C. § 30301(13).
8 Finally, among the stated purposes of the act are to “make the prevention of prison
9 rape a top priority in each prison system,” to “increase the accountability of prison
10 officials who fail to detect, prevent, reduce, and punish prison rape,” and to
11 “protect the Eighth Amendment rights of Federal, State, and local prisoners.” 34
12 U.S.C. §§ 30302(2), (6), (7).

13 Plaintiffs’ interests align with the congressionally stated purposes and
14 findings. It is indisputable Plaintiffs’ transgender status places them at increased
15 risk of the precise public safety concerns contemplated by the PREA. Defendants
16 have failed to establish how their interests outweigh Plaintiffs’. Thus, Plaintiffs
17 have established their interests in personal and public safety outweigh Defendants’
18 interests.

19 **D. Balance of the Equities**

20 Plaintiffs assert the balance of equities tips sharply in their favor,

1 particularly because the Ninth Circuit’s sliding scale analysis requires Plaintiff to
2 demonstrate only serious questions going to the merits. ECF No. 7 at 27. The
3 Supreme Court has recognized that courts must “balance the competing claims of
4 injury and must consider the effect on each party of the granting or withholding of
5 the requested relief.” *Amoco Production Co. v. Village of Gambell, AK*, 480 U.S.
6 531, 542 (1987). Courts have found the maintenance of the “status quo” relevant
7 to the balance of the equities, however, it is not the only consideration. *See Flex-*
8 *Plan Servs., Inc. v. Evolution1, Inc.*, No. C13-1986-JCC, 2013 WL 12092543, at
9 *7 (W.D. Wash. Dec. 31, 2013); *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d
10 804, 809 (9th Cir. 1963) (“We are not to be understood as stating that the [status
11 quo] principles are hard and fast rules, to be rigidly applied to every case
12 regardless of its peculiar facts.”).

13 Here, Plaintiffs have provided ample evidence of the harm they will suffer
14 should Defendants make the proposed disclosures. ECF Nos. 7 at 24-26; 49 at 18-
15 19. Additionally, while Plaintiffs maintain that public interest is served by
16 preventing the disclosure, any interest the public has in the disclosures is
17 substantially outweighed by the harm Plaintiffs face. ECF Nos. 7 at 26-27; 49 at
18 18-19. Defendants, on the other hand, have merely stated public interest is not
19 served by holding Defendants liable for constitutional violations for their good-
20 faith responses to PRA requests. ECF No. 32 at 31. They have not proffered any

1 reasons as to how this preliminary injunction would harm their interests.
2 Therefore, the Court finds the balance of the equities sharply tips in Plaintiffs'
3 favor. Maintaining the status quo is warranted due to the private nature of the
4 records and the threat of harm should they be released, as well as the apparent lack
5 of prejudice to Defendants.

6 **E. Prison Litigation Reform Act**

7 Defendants argue Plaintiffs' requested relief does not comply with the
8 Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626, because it is not
9 narrowly drawn or the least intrusive means necessary to correct the harm. ECF
10 No. 32 at 32. Plaintiffs argue limiting the preliminary injunction will not address
11 the threat of irreparable harm posed by ongoing records requests. ECF No. 49 at
12 19-20. Plaintiffs further argue Defendants should not be granted discretion at this
13 time to identify and redact information prior to disclosing records. *Id.*

14 The PLRA authorizes preliminary injunctive relief that is narrowly drawn,
15 extends no further than necessary to correct the harm, and is the least intrusive
16 means necessary. 18 U.S.C. § 3626(a)(1)-(2). Those requirements are known as
17 the "need-narrowness-intrusiveness" requirements. *See Armstrong v.*
18 *Schwarzenegger*, 622 F.3d 1058, 1070 (9th Cir. 2010). Courts must make need-
19 narrowness-intrusiveness findings "sufficient to allow a clear understanding of the
20 ruling." *Edmo v. Corizon, Inc.*, 935 F.3d 757, 783 (9th Cir. 2019). However, the

1 Ninth Circuit has never required such findings to be so specific as to require a
2 provision-by-provision explanation; rather, “overall statements by the district court
3 that the need-narrowness-intrusiveness standard has been met” are sufficient.
4 *Armstrong*, 622 F.3d at 1070-71. “What is important, and what the PLRA
5 requires, is a finding that the set of reforms being ordered—the ‘relief’—corrects
6 the violations of prisoners’ rights with the minimal impact possible on defendants’
7 discretion over their policies and procedures.” *Id.* at 1071.

8 Defendants argue the proposed injunction is not narrowly drawn or the least
9 intrusive means because it prohibits Defendants from disclosing any records
10 responsive to the requests at issue, particularly where the request identifies an
11 individual by name. ECF No. 32 at 32. They further argue Plaintiffs have failed to
12 show how the requests for records pertaining to specific individuals, or individuals
13 who do not wish to keep confidential their “gender identity,” implicates a privacy
14 concern. *Id.*

15 The Court disagrees. The documents Defendants have identified as
16 responsive may include references, directly or indirectly, to Plaintiffs’ transgender
17 status. ECF No. 7 at 13. Taken together, the information contained in the
18 documents could be pieced together to derive Plaintiffs’ identities and locations,
19 placing them at greater risk of harm. Additionally, Defendants’ contention that
20 inmates who choose to disclose their transgender status within the prison system

1 are not entitled to keep that same information confidential from the general public
2 is unpersuasive. A person's reasons for disclosing their transgender status may
3 vary depending on the circumstances, particularly in the prison system where a
4 person's transgender status places them at increased risk of harm. *See, e.g.*, ECF
5 Nos. 13, 14. Notably, Defendants' own policies clearly state an individual's
6 transgender status will be kept confidential and disclosed only on a need-to-know
7 basis. ECF No. 7 at 7. Defendants have not proffered any reason why the general
8 public would need to know such information.

9 A preliminary injunction enjoining Defendants from releasing documents
10 that contain information related to, or referring to, individuals' transgender status,
11 sexual history, genital anatomy, and other related information is narrowly drawn
12 and no more intrusive than necessary under the circumstances. Defendants do not
13 use a system of tracking purely aggregate numerical data on transgender
14 individuals. ECF No. 32 at 5. When such information is requested, as is the case
15 here, Defendants release a variety of documents from which requestors can derive
16 the information they seek. *Id.* The information contained in those documents may
17 also include highly confidential information, the release of which would put
18 Plaintiffs at an increased risk of harm. ECF No. 7 at 13.

19 Defendants argue the proposed injunction will prohibit them from releasing
20 any responsive documents. ECF No. 32 at 32. However, a preliminary injunction

1 prohibiting Defendants from releasing confidential information related to an
2 individual's transgender status is not a blanket ban on the release of any
3 documents. Rather, it will require Defendants to keep confidential any information
4 relating to a person's transgender status and any information pertaining thereto,
5 just as Defendants' own policies currently require.

6 Defendants urge the Court to narrowly tailor the preliminary injunction to
7 address each specific record request and provide detailed instruction regarding
8 which records Defendants are enjoined from producing and the basis for the
9 Court's decision. ECF No. 32 at 32. As previously discussed, the PLRA does not
10 require courts to make findings on a paragraph-by-paragraph or line-by-line basis.
11 *Armstrong*, 622 F.3d at 1070. This is because prospective relief in the context of
12 prisons is necessarily aggregate in nature due to the complex nature of prison
13 systems' policies and procedures and because courts often need to address multiple
14 areas of prison administration. *Id.* at 1070-71.

15 Limiting the injunction as Defendants request is not only impractical but
16 would also fail to address the ongoing threats Plaintiffs face. Defendants continue
17 to receive records requests that relate to transgender individuals. Neither
18 Defendants nor the Court can anticipate what specific information will be
19 requested in the future and given Defendants' practices of divulging numerous
20 documents pursuant to PRA requests, an injunction like the one Defendants

1 propose would open the door to persistent litigation of issues like those presently
2 before the Court.

3 Defendants do not argue the proposed injunction would adversely affect or
4 burden their internal administrative functions. Thus, under the circumstances and
5 at the preliminary injunctive stage, the Court finds the requested injunctive relief is
6 narrowly drawn, extends no further than necessary, and is the least intrusive means
7 necessary to address the harm.

8 **II. Preliminary Injunctive Relief—PRA Claims**

9 The Washington Public Records Act (“PRA”) provides injunctive relief for
10 certain public records that fall within the statute’s listed exemptions. *Ameriquest*
11 *Mortg. Co. v. Off. of Att'y Gen. of Washington*, 177 Wash. 2d 467, 486 (2013). To
12 obtain preliminary injunctive relief under the PRA, the moving party must show a
13 likelihood that an exemption applies, and that the disclosure would clearly not be
14 in the public interest and would substantially and irreparably damage the party.
15 *Seiu Healthcare* 775NW v. State, Dep’t of Soc. & Health Servs., 193 Wash. App.
16 377, 393 (2016) (citing *Ameriquest Mortg. Co.*, 177 Wash. 2d at 487). Only after a
17 court has determined an exemption likely applies does it determine whether
18 injunctive relief is appropriate. *Id.* at 392.

19 **A. Likelihood That an Exemption Applies**

20 One function of the PRA exemptions is to “exempt from public inspection

1 those categories of public records most capable of causing substantial damage to
2 the privacy rights of citizens.” *Ameriquest Mortg. Co.*, 177 Wash. 2d at 486
3 (citation omitted). The exemptions should be narrowly construed to facilitate
4 governmental transparency. *Id.* at 487.

5 *i. “Other statute” Exemption*

6 Plaintiffs argue the proposed disclosures are exempt under the “other
7 statutes” provision of the PRA because that provision incorporates constitutional
8 mandates. ECF No. 7 at 29. Defendants maintain the proposed disclosures do not
9 violate either federal or state constitutional law. ECF No. 32 at 34.

10 The United States Constitution and the Washington State Constitution are
11 incorporated in the PRA’s “other statute” exemption. *See Yakima v. Yakima*
12 *Herald-Republic*, 170 Wn. 2d 775, 808 (2011); *Freedom Found. v. Gregoire*, 178
13 Wn. 2d 686, 695 (2013). Having already found Plaintiffs are likely to succeed on
14 their Eighth and Fourteenth Amendment claims, as well as their Article I, Section 7
15 claim, the Court finds the “other statutes” exemption of the PRA likely applies.

16 *ii. Specific Intelligence Exemption*

17 Plaintiffs argue the disclosures are exempt as specific intelligence
18 information gathered by a law enforcement or penology agency. ECF No. 7 at 29-
19 30. Defendants argue the purpose of that exemption is to protect the integrity of
20 law enforcement investigations and the disclosures at issue are not law

1 enforcement investigations. ECF No. 32 at 34-35.

2 RCW 42.56.240(1) exempts records from disclosure that constitute
3 “[s]pecific intelligence information and specific investigative records compiled by
4 investigative, law enforcement, and penology agencies, . . . the nondisclosure of
5 which is essential to effective law enforcement or for the protection of any
6 person’s right to privacy[.]” RCW 42.56.240(1). Records are “specific
7 investigative records” if they were “compiled as a result of a specific investigation
8 focusing with special intensity upon a particular party.” *Koenig v. Thurston Cty.*,
9 175 Wash. 2d 837, 843 (2012), *as amended* (Dec. 18, 2012) (citation omitted).
10 “The investigation must be one designed to ferret out criminal activity or to shed
11 light on some other allegation of malfeasance.” *Id.*

12 Here, Plaintiffs argue the disclosures were (1) compiled by DOC, a
13 penological institution, (2) to gather specific information about Plaintiffs, (3) for
14 the purpose of evaluating security and housing classifications, as well as general
15 prison safety. ECF No. 7 at 30. Thus, the disclosures constitute specific
16 investigative records. *Id.* Defendants concede they gather specific information
17 regarding individuals’ transgender status but argue the information is not an
18 investigation as contemplated by the statute nor is the information used to
19 determine criminality. ECF No. 32 at 35-36. More precisely, Defendants interpret
20 the statute’s “investigation” as something that is “designed to ferret out criminal

1 activity or to shed light on some other allegation of malfeasance.” ECF No. 32 at
2 35 (citing *Koenig v. Thurston Cnty.*, 175 Wash. 2d 837, 843 (2012) (citation
3 omitted)).

4 Washington courts have interpreted the “some other allegation of
5 malfeasance” to include an entity’s internal investigations into wrongdoing. *See,*
6 *e.g., City of Fife v. Hicks*, 186 Wash. App. 122, 133-34 (2015) (collecting cases).
7 Many such cases involve police departments investigating allegations of police
8 misconduct. *See id.* In finding police department internal investigation records
9 exempt, the Washington Supreme Court has held “[t]he main purpose of the
10 internal investigation is to reach an internal disciplinary remedy for proved
11 misconduct,” which is essential to effective law enforcement. *Sargent v. Seattle*
12 *Police Dep’t*, 179 Wash. 2d 376, 393-94 (2013). Similarly, investigative records
13 into prison inmate misconduct have also been held exempt under the PRA. *See*
14 *Haines-Marchel v. State, Dep’t of Corr.*, 183 Wash. App. 655 (2014) (finding
15 internal reports detailing confidential informants’ accounts of another inmate’s
16 criminal activity within the prison constituted specific intelligence gathered for the
17 purposes of effective law enforcement).

18 Here, Defendants acknowledge they collect specific information focused on
19 individuals who identify as transgender for the purpose of evaluating PREA Risk
20 Assessments. ECF No. 32 at 35-36. The issue is whether such information is

1 gathered to “shed light on some other allegation of malfeasance.” *Koenig*, 175
2 Wash. 2d at 843. Based on Washington precedent and the stated purposes of the
3 PREA (see 34 U.S.C. § 30302), it could certainly be argued, as Plaintiffs do, that
4 Defendants gather information on this particular group of Plaintiffs for the
5 purposes of effective law enforcement, namely, to enforce and comply with the
6 PREA. Therefore, the Court finds the “investigative records for effective law
7 enforcement” exemption likely applies.

iii. Health Care Records Exemption

9 Plaintiffs contend the disclosures are exempt as health care records. ECF
10 No. 7 at 31. Defendants do not specifically address the argument but do state any
11 records contained in an individual's medical file would be withheld in their
12 entirety pursuant to RCW 70.02. ECF No. 32 at 14-15. Defendants also indicate
13 any information relating to an individual's medical or mental health, diagnosis, or
14 treatment would be redacted from the responsive documents. *Id.*

15 The PRA exempts certain health care information from disclosure. RCW
16 42.56.360. Health care disclosures are evaluated under Chapter 70.02, which is
17 incorporated into the PRA. *Id.* Under Chapter 70.02, “health care information” is
18 defined as “any information, whether oral or recorded in any form or medium, that
19 identifies or can readily be associated with the identity of a patient and directly
20 relates to the patient's health care.” RCW 70.02.020(17). Plaintiffs do not allege

1 Defendants will disclose Plaintiffs' entire medical files but instead argue the
2 proposed disclosures contain information relating to Plaintiffs' transgender status,
3 which is a health care concern itself. ECF No. 7 at 33. The Court has already
4 determined that the disclosures may contain information related to Plaintiffs'
5 transgender status and could be pieced together to reveal Plaintiffs' identities.
6 Thus, it follows the records may contain information "that identifies or can readily
7 be associated with" Plaintiffs' identities and "relates to the [Plaintiffs'] health
8 care." Consequently, the Court finds there is a likelihood the disclosures are
9 exempt under the PRA.

10 **B. Public Interest and Substantial and Irreparable Damage**

11 As discussed, Plaintiffs have demonstrated the disclosures do not serve the
12 public's interest; instead, nondisclosure better serves public interest as it protects
13 Plaintiffs' health and wellbeing in furtherance of prison safety. *See also* ECF Nos.
14 7 at 24-27; 49 at 18-19. In any event, Plaintiffs maintain any interest the public
15 may have in the disclosures is outweighed by Plaintiffs' own interest in their health
16 and safety. Finally, Plaintiffs have demonstrated they face very real threats of
17 substantial and irreparable harm should the disclosures be released. Therefore, the
18 Court finds Plaintiffs have demonstrated the disclosures do not serve the public
19 interest and that they will likely face substantial and irreparable injury if the
20 disclosures are released.

1 Finding all the elements have been met for purposes of this motion, the
2 Court finds the issuance of a preliminary injunction appropriate. Additionally, the
3 Court finds, under the circumstances, the preliminary injunction is narrowly drawn,
4 extends no further than necessary, and is the least intrusive means necessary to
5 address the harm.

6 **ACCORDINGLY, IT IS HEREBY ORDERED:**

7 1. Plaintiffs' Motion for Preliminary Injunction (ECF No. 7) is
8 **GRANTED.**

9 2. Plaintiffs (and the putative class of similarly situated persons) have
10 demonstrated a privacy interest that will be irreparably injured if
11 confidential records related to their physical and mental health are
12 released to the public. Defendants are **preliminarily enjoined** from
13 releasing any records (including names and prisoner identification
14 numbers) concerning or that identify the gender identity, transgender
15 status (including non-binary, intersex, and gender non-conforming
16 people), sexual history, sexual orientation, sexual victimization, genital
17 anatomy, mental and physical health, of the proposed class members
18 (current and past prisoners), including any records concerning transfer
19 requests, discipline, PREA investigations and allegations and
20 reassignment surgery.

1 3. Pursuant to Federal Rule of Civil Procedure 65(c), no bond is required.

2 The District Court Executive is directed to enter this Order and furnish
3 copies to counsel.

4 DATED May 17, 2021.



5 A handwritten signature in blue ink that reads "Thomas O. Rice".
6 THOMAS O. RICE
7 United States District Judge

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